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OFFICE OF PETITIONS

In re Patent No.: 6,984,728 :
Issue Date: January 10, 2006 :
Application No. 09/994,064 :
Filed: November 6, 2001 : ON PETITION
For: RECOMBINANT INFECTIOUS :
LARYNGOTRACHEITIS VIRUS AND USES :
THEREOF :

This is a decision on the petition filed February 19, 2004, styled as a "petition for expungement of information under 37 CFR 1.59", which is properly treated as a petition under 37 CFR 1.182 requesting the terminal disclaimer filed July 8, 2003 be nullified.

The petition is **dismissed**.

While it is recognized that the instant petition was filed prior to issuance, it was unfortunately not brought to the attention of an appropriately empowered deciding official until after the patent issued. As explained in MPEP 1490, subsection B, once the patent has issued, the USPTO will not nullify the effect of a recorded terminal disclaimer.

It should be noted that captioning the petition as one under § 1.59 appears to have caused or at least contributed to the delay in this case as petitions under this regulation can be decided by the Technology Center, and as such it was not brought to the attention of this office in time to avert issuance with the recorded disclaimer in effect. As explained in MPEP 1490, petitions seeking to nullify a terminal disclaimer are to be filed under 37 CFR 1.182, (and not § 1.59) and as such are routed to and can only be decided by, the Office of Petitions. See MPEP 1002.02(b) ¶ 11.

Telephone inquiries related to this decision should be addressed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions